IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20/9/2004

Coram

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

Writ Petition No.9474 of 1997

V. Murugesan .. Petitioner

-Vs-

1. The Presiding Officer,
Labour Court, Salem.

2. The Special Officer,
Mokkanar Primary Agricultural
Co-operative Bank Ltd No.S.296,
Mookkanar Post,
Omalur Taluk, Salem .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of certiorarified mandamus as stated therein.

For petitioner : Mr. J.Narayanamurthy

For 2nd respondent : Mr. M.R. Raghavan

:O R D E R

Petitioner has filed the above writ petition praying to issue a writ of Certiorarified Mandamus to call for the records of the first respondent relating to the Award dated 29.10.1996 in I.D. No.461/92 and to quash the same and to pass orders to reinstate the petitioner in service with backwages and continuity of service.

2. Today, when the above writ petition was taken up for consideration in the presence of the learned counsel for the petitioner and the learned counsel for the second respondent, having regard to the materials placed on record and upon hearing the learned counsel for both, what could be gathered from the impugned award is that the petitioner who was working as a Clerk in the Mookkanar Primary agricultural CoOperative Bank Ltd., Omalur has misappropriated the funds of the society by not remitting the insurance amount collected on the loans advanced for bullocks and sheeps; that he was

temporarily suspended and charge sheet was issued and after the charges were proved, the petitioner was dismissed from service on 7.5.1991. Aggrieved over the order of dismissal, the petitioner has moved the Labour Court, Salem which confirmed the order of dismissal. Against this Order, the petitioner has come forward to file the above writ petition praying for the relief extracted supra.

3. Learned counsel for the petitioner submits that the allegations against him are not proved in the manner known to law; that the enquiry officer without considering the Medical Certificate conducted the enquiry exparte; that the enquiry officer neither examined the Special Officer of the Bank nor the officers of the insurance company. Moreover, the Special Officer has no jurisdiction to pass the suspension order. Further, it is stated that the amount involved in the dispute is only a meagre amount, the punishment imposed on the petitioner is disproportionate to the nature of offence committed and therefore, the order of dismissal confirmed by the Labour Court shall be quashed and the petitioner shall be reinstated with back wages with all attendant benefits.

4. Learned counsel for the second respondent submits that the petitioner was issued with charge-sheet for the allegations that the amount received from the persons who availed the loan towards insurance were not given receipts; that the sum of Rs.4,875/- and Rs.1,077/- received towards insurance was not credited in the Bank's account and the amount collected towards insurance was not paid for six months and was remitted later. It is further submitted by the learned counsel for the second respondent that the enquiry was conducted in a fair and proper manner; that the enquiry has not been vitiated and the labour Court, after going through the entire records and examining the witnesses, found that the enquiry has been conducted in a fair and proper manner and held that charges were proved. He also referred to the judgment reported in 1995 (2) LLN 1078 (N. Nallasamy vs. II-Addl.Labour Court, Chennai),which was cited in the award of the labour Court. In that case, the value of the theft involved was only Rs.10/- to 15/-. In that case, It has been held that it was open to the Labour Court to take the view that, though the value of the article was not high, the commission of theft having been proved, the punishment of dismissal was warranted. On the basis of this judgment, the labour Court has come to the conclusion that this is not the case where leniency could be shown since the case is one of misappropriation of the funds of the society and confirmed the order of dismissal of the petitioner.

5. Upon hearing the learned counsel for the petitioner and the second respondent and considering the facts and circumstances of the case, this Court is unable to find any illegality in the order of the labour Court and also no valid ground is brought forth by the petitioner to cause interference. Though the learned counsel for the petitioner contends that the amount involved is a meagre amount, since the offence being misappropriation, this Court is of the view that the misappropriation in the present case cannot be taken leniently in view of the involvement of Co-Operative Society's money and interference with the award of the labour Court is not called for.

In result,
i) the Writ Petition is dismissed as without merits;
ii) the award dated 29.10.1996 made in I.D. No.461 of 1992 by the Labour Court, Salem is confirmed;
iii) however, in the circumstances of the case, there shall be no order as to costs.

Index: yes

Internet: yes

asvm

To
The Presiding Officer,
Labour Court, Salem.